

BEFORE THE TENNESSEE REGULATORY AUTHORITY AT

NASHVILLE, TENNESSEE

April 13, 2005

IN RE:

**PETITION OF NEWSOUTH HOLDINGS, INC.,
NEWSOUTH COMMUNICATIONS CORP., AND
NUVOX COMMUNICATIONS, INC. FOR APPROVAL
OF AN INTERNAL CORPORATE REORGANIZATION,
TRANSFER OF AUTHORITY, AND FOR APPROVAL,
AS NECESSARY, OF RELATED TRANSACTIONS**

**DOCKET NO.
04-00309**

**ORDER APPROVING TRANSFER
OF AUTHORITY AND RELATED TRANSACTIONS**

This matter came before Chairman Pat Miller, Director Deborah Taylor Tate and Director Sara Kyle of the Tennessee Regulatory Authority (the "Authority" or "TRA"), the voting panel assigned to this Docket, at a regularly scheduled Authority Conference held on November 8, 2004 for consideration of the *Petition of NewSouth Holdings, Inc., NewSouth Communications Corp., and NuVox Communications, Inc. for Approval of an Internal Corporate Reorganization, Transfer of Authority, and for Approval, as Necessary, of Related Transactions* ("Petition") filed on September 22, 2004. Pursuant to Tenn. Code Ann. § 65-4-113 (2004) and the Rules of the TRA, NewSouth Communications Corp. ("NewSouth"), NewSouth Holdings, Inc. ("NewSouth Holdings"), and NuVox Communications, Inc. ("NuVox") (together "Petitioners") asked the TRA to approve a corporate reorganization and related transactions, which will result in the transfer of authority of two Tennessee certificated public utilities.

Statutory and Regulatory Framework

Tenn. Code Ann. § 65-4-113 (2004) requires a public utility to obtain TRA approval before transferring its authority to provide utility services in Tennessee (such authority is also known as a “certificate of public convenience and necessity” or “CCN”). Tenn. Code Ann. § 65-4-113(a) (2004) reads as follows:

No public utility, as defined in § 65-4-101, shall transfer all or any part of its authority to provide utility services, derived from its certificate of public convenience and necessity issued by the authority, to any individual, partnership, corporation or other entity without first obtaining the approval of the authority.

Tenn. Code Ann. § 65-4-113(b) (2004) includes the standards by which the TRA shall consider an application for transfer of authority, in pertinent part as follows.

Upon petition for approval of the transfer of authority to provide utility services, the authority shall take into consideration all relevant factors, including, but not limited to, the suitability, the financial responsibility, and capability of the proposed transferee to perform efficiently the utility services to be transferred and the benefit to the consuming public to be gained from the transfer. . . .

TRA also must pre-approve mergers between public utilities holding CCNs in the State of Tennessee, in accordance with Tenn. Code Ann. § 65-4-112(a) (2004):

No lease of its property, rights, or franchises, by any such public utility, and no merger or consolidation of its property, rights and franchises by any such public utility with the property, rights, and franchises of any other such public utility of like character shall be valid until approved by the [A]uthority, even though power to take such action has been conferred on such public utility by the state of Tennessee or by any political subdivision of the state.

Finally, when a customer base is transferred between two or more telecommunications service providers, TRA Rule 1220-4-2-.56(2)(d) provides that sufficient notice has been given to affected customers when the following criteria have been met:

2. A notification letter, pre-approved by the Authority, shall be mailed by U.S. First Class Postage by the telecommunications service provider being acquired to its customers describing the customer transfer and explaining that the customers’ local or long distance service will be transferred to the

acquiring telecommunications service provider by a certain date unless the customer selects another telecommunications service provider. This customer notification shall be mailed to the customers no less than thirty (30) days prior to the actual customer transfer. The notification letter required by the FCC may be used for the notification purposes of this part. The Authority may waive the thirty (30) day notice requirement of this part for good cause shown.

3. The acquiring telecommunications service provider agrees to pay any fees charged to the customer associated with changing service to the acquiring telecommunications service provider. The notification letter required in 1220-4-2-.56(2)(d)(2) shall inform the customer of this provision.
4. The acquiring telecommunications service provider agrees to provide to the affected customers a thirty (30) day written notice of any rate increase that may affect their service up to ninety (90) days from the date of the transfer of customers. The notification letter mentioned in 1220-4-2-.56(2)(d)(2) shall inform the customer of this provision.

Background

By an order dated November 24, 1998 in Docket No. 98-00325, the TRA granted NewSouth a CCN to provide local and long distance telecommunications services in Tennessee. The Authority granted NuVox a CCN in Docket No. 98-00806 by an order dated February 22, 2000. NuVox, Inc. ("Parent"), through other subsidiaries, is the ultimate parent company of both NuVox and NewSouth.¹

The Petition

In the *Petition*, which was filed with the TRA on September 22, 2004, the Petitioners outline a series of transactions through which Parent will reorganize and consolidate its operating subsidiaries into a single operating subsidiary, NewSouth Holdings. NewSouth Holdings thereafter will change its name to NuVox Communications, Inc. d/b/a NuVox Communications f/k/a NewSouth Holdings, Inc. ("New Subsidiary"). Through the transactions, NewSouth and

¹ NuVox is a subsidiary of TriVergent Corporation, which is wholly owned by Gabriel Communications Finance Company ("Gabriel") which, in turn, is wholly owned by Parent. As part of the overall reorganization, TriVergent will merge with and into New Subsidiary, with New Subsidiary being the surviving entity. New Subsidiary thereafter will be a direct subsidiary of Gabriel, a direct subsidiary of the ultimate parent, Parent.

NuVox will transfer to New Subsidiary their authority to provide utility service in Tennessee. New Subsidiary will retain and use the CCN of NuVox and the tariffs of NewSouth. Upon consummation of the reorganization, the parties will surrender the tariffs of NuVox and the CCN of NewSouth. More specifically, these transfers and surrenders will occur as follows:

1. NewSouth will merge with and into New Subsidiary. NewSouth will transfer its intrastate customer base and tariffs to New Subsidiary, and New Subsidiary will assume all of NewSouth's assets and operations. Upon completion of the customer transfer, the Petitioners and New Subsidiary will surrender NewSouth's CCN, and the tariffs will be converted into the name of New Subsidiary. Following these transactions, NewSouth will cease to exist as a corporate entity, and New Subsidiary will provide telecommunications services to NewSouth's customers.
2. NuVox will merge with and into New Subsidiary. NuVox will transfer its intrastate customer base and CCN to New Subsidiary, and New Subsidiary will assume all of NuVox's assets and operations. Upon completion of the customer transfer, the Petitioners and New Subsidiary will surrender NuVox's tariffs. Following these transactions, NuVox will cease to exist as a corporate entity. New Subsidiary will become the holder of the CCN formerly granted to NuVox, and New Subsidiary will provide telecommunications services to NuVox's customers.

Following consummation of the mergers, New Subsidiary will be the only subsidiary of Parent authorized to provide telecommunications services in Tennessee.

According to the Petitioners, the proposed reorganization will not cause any loss or impairment of service to the customers of NuVox or NewSouth. The customers will continue to receive existing services under their current rates, terms and conditions, and any future changes in the rates, terms and conditions will be made consistent with TRA requirements. The utilities currently are managed by the same team of experienced telecommunications personnel, and day-to-day operations and customer service functions will continue under New Subsidiary as they have in the past under NewSouth and NuVox. Parent will remain the parent corporation of the certificated utility, New Subsidiary.

New Subsidiary, NewSouth and NuVox will send advance written notice to affected NewSouth and NuVox customers at least thirty (30) days prior to the transfer, informing them of the proposed transaction. NewSouth has been including the NuVox name on customer bills since June 2004 to minimize consumer confusion upon completion of the transfer. The letters to NewSouth's customers also will include an official notification of the name change of their service provider.²

According to the Petitioners, this reorganization will generally be transparent to customers and will benefit the public interest. They assert that the consolidation will provide significant reductions in legal, accounting, and tax administrative burdens. It also will simplify the NuVox companies' corporate structure, eliminating administrative redundancy and improving the companies' overall efficiency. Petitioners contend that these improvements will enhance their ability to compete in Tennessee and elsewhere and, over time, may lead to a greater number of product and service options for Tennesseans.

November 8, 2004 Authority Conference

At the November 8, 2004 Authority Conference, the Directors voted unanimously to approve the *Petition* pursuant to a finding of compliance with the requirements of Tenn. Code Ann. §§ 65-4-112 and -113 (2004) and the rules of the TRA.

IT IS THEREFORE ORDERED THAT:

1. The transfer of customer base and assets from NuVox to New Subsidiary and from NewSouth to New Subsidiary, as described in the *Petition* and herein, is approved.

² This information is not necessary for the NuVox customers because the name of their service provider will not change, they will continue to see the name NuVox Communications on their telecommunications invoice

2. The transfer of the CCN held by NuVox to New Subsidiary as described in the *Petition* and herein is approved.

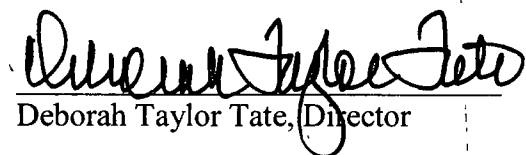
3. The transfer of NewSouth's tariffs to New Subsidiary as described in the *Petition* and herein is approved.

4. Upon completion of the customer transfers, the Petitioners shall surrender the CCN held by NewSouth and the tariffs of NuVox.

5. Upon completion of the transactions, New Subsidiary will have the name NuVox Communications, Inc. (d/b/a NuVox Communications f/k/a NewSouth Holdings, Inc.) and will be authorized to provide utility service in Tennessee under the CCN previously granted to NuVox and the tariffs previously filed by NewSouth.³



Pat Miller, Chairman



Deborah Taylor Tate, Director



Sara Kyle, Director

³ On February 17, 2005, Petitioners notified the TRA that the transactions, authorized by the panel on November 8, 2004, have been completed. *See Completion of Transaction* (February 17, 2005)